



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 28 2019

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jason DeDario
Safety Director
Cohen Brothers, Inc.
1520 Fourteenth Ave.
Middletown, Ohio 45044

Re: Finding of Violation
Cohen Brothers, Inc.

Dear Mr. DeDario:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Cohen Brothers, Inc. ("Cohen" or "you") under Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a). We find that you have violated the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.*, specifically the regulations for the Protection of Stratospheric Ozone at 40 C.F.R. Part 82, Subpart F, at eight of your facilities in Ohio and Kentucky. EPA promulgated these regulations as required by Section 608 of the CAA, 42 U.S.C. § 7671g.

Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply, and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the FOV prior to the conference date.

Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Natalie Topinka. You may contact Ms. Topinka at (312) 886-3853 or topinka.natalie@epa.gov to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

Michael D. Harris

Michael D. Harris
Acting Division Director
Enforcement and Compliance Assurance Division

Enclosure

cc: Beverly Spagg, EPA Region 4
Greg Fried, Chief, Stationary Source Enforcement Branch, OECA, EPA HQ

1. In accordance with Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F, applicable to recycling and emissions reductions of ozone-depleting substances. As specified at 40 C.F.R. § 82.150(a), the purpose of the regulations is to reduce emissions of class I and class II refrigerants and their non-exempt substitutes to the lowest achievable level by maximizing the recapture and recycling of such refrigerants during the service, maintenance, repair, and disposal of appliances.
2. Under 40 C.F.R. § 82.152, an appliance is any device which contains and uses a class I or class II substance or substitute as a refrigerant and which is used for household or commercial purposes, including any air conditioner, motor vehicle air conditioner (MVAC), refrigerator, chiller, or freezer. For a system with multiple circuits, each independent circuit is considered a separate appliance.
3. Under 40 C.F.R. § 82.152, an MVAC is an appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. § 82.32(d), which states that MVAC “means mechanical vapor compression refrigeration equipment used to cool the driver’s or passenger’s compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC-22 refrigerant.”

4. Under 40 C.F.R. § 82.152, an MVAC-like appliance is a mechanical vapor compression, open-drive compressor appliance with a full charge of 20 pounds or less of refrigerant used to cool the driver's or passenger's compartment of off-road vehicles or equipment. This includes, but is not limited to, the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R-22 refrigerant.
5. Under 40 C.F.R. § 82.152, a small appliance is any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners, portable air conditioners, and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.
6. Under 40 C.F.R. § 82.154(a)(1), no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with certain exceptions not relevant to this matter. *See also* 42 U.S.C. § 7671g(c).
7. Under 40 C.F.R. § 82.155(b), the final processor—i.e., persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, MVAC, or MVAC-like appliance—must either:
 - (1) Recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155(a); or
 - (2) Verify using a signed statement or a contract that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a). If using a signed statement, it must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. If using a signed contract between the supplier and the final processor, it must either state that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the supplier.¹
8. Under 40 C.F.R. § 82.155(b)(2)(i), it is a violation of 40 C.F.R. Part 82, Subpart F to accept a signed statement or contract if the person receiving the statement or contract knew or had reason to know that the signed statement or contract is false.

¹ In the Preamble to the original rule and in revisions to 40 C.F.R. Part 82 Subpart F, EPA described under what circumstances a contract was appropriate and when a disposer should use a signed statement: "EPA notes here that a contract is appropriate for businesses to streamline transactions in cases where they maintain long-standing business relationships. A contract would be entered into prior to the transaction, such as during the set-up of a customer account, not simultaneously with the transaction. A signed statement is more appropriate for one-off transactions between the supplier and the final processor." 81 Fed. Reg. 82,272 at 82,309 (Nov. 18, 2016).

9. Under 40 C.F.R. § 82.155(b)(2)(ii), the final processor must notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the facility. The form of this notification may be signs, letters to suppliers, or other equivalent means.
10. Under 40 C.F.R. § 82.155(b)(2)(iii), if all refrigerant has leaked out of the appliance, the final processor must obtain a signed statement that all the refrigerant in the appliance had leaked out prior to delivery to the final processor and recovery is not possible. "Leaked out" in this context means those situations in which the refrigerant has escaped because of system failures, accidents or other unavoidable occurrences not caused by a person's negligence or deliberate acts such as cutting refrigerant lines.

FACTUAL BACKGROUND

11. In many circumstances, when refrigerant recovery equipment is used on a small appliance, that process leaves easily recognizable signs indicative that proper recovery has occurred. These signs include, but are not limited to: (a) for any appliance with visible refrigerant lines, puncture marks on refrigerant lines; and (b) for refrigerators, air conditioners and some freezers with refrigerant lines hidden behind metal, plastic, or cardboard panels, those coverings will be removed and puncture marks will be visible.
12. Cohen owns and/or operates scrap metal recycling facilities (Facilities) at the following locations:
 - a. 1797 Valley Street, Dayton, Ohio (Valley Street Facility);
 - b. 105 Black Street, Hamilton, Ohio (Hamilton Facility);
 - c. 4538 Kellogg Ave, Cincinnati, Ohio (Kellogg Facility);
 - d. 5300 Vine Street, Cincinnati, Ohio (Moskowitz Facility);
 - e. 5038 Beech Street, Cincinnati, Ohio (Norwood Facility);
 - f. 12175 Reading Road, Sharonville, Ohio (Sharonville Facility);
 - g. 13229 Dixie Highway, Walton, Kentucky (Walton Facility); and
 - h. 5101 Farmersville-West Carrollton Road, Miamisburg, Ohio (West Carrollton Facility)
13. At its Facilities, Cohen accepts for recycling and disposal, among other things, small appliances and MVACs that contain or once contained refrigerant, and Cohen is therefore subject to requirements at 40 C.F.R. Part 82, Subpart F at each of its Facilities.
14. EPA conducted inspections of the Facilities on the dates listed:
 - a. The Valley Street Facility was inspected on March 18, 2019;
 - b. The Hamilton Facility was inspected on March 18, 2019;
 - c. The Kellogg Facility was inspected on March 19, 2019;
 - d. The Moskowitz Facility was inspected on March 19, 2019;
 - e. The Norwood Facility was inspected on March 19, 2019;
 - f. The Sharonville Facility was inspected on March 19, 2019;

- g. The Walton Facility was inspected on March 20, 2019; and
- h. The West Carrollton Facility was inspected on March 18, 2019.

FINDINGS and VIOLATIONS

Valley Street Facility

- 15. At the time of the inspection, Cohen representatives stated that the Valley Street Facility accepted small appliances only if refrigerant was no longer in the units and the refrigerant compressors had been removed.
- 16. At the time of the inspection, EPA inspectors observed refrigerators clearly visible on a pile of metal to be recycled at the Valley Street Facility.
- 17. At the time of the inspection, Cohen stated that it did not recover refrigerant from small appliances at the Valley Street Facility.
- 18. At the time of the inspection, Cohen representatives stated that it did not require suppliers to provide any kind of documentation of refrigerant recovery for small appliances and MVACs arriving at the Valley Street Facility empty of refrigerant.
- 19. By failing either to recover any remaining refrigerant from small appliances in accordance with 40 C.F.R. § 82.155(a); or to verify, using a signed statement or contract, that all refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances, Cohen violated 40 C.F.R. § 82.155(b) at the Valley Street Facility.

Hamilton Facility

- 20. At the time of the inspection, Cohen representatives stated that it accepted small appliances at its Hamilton Facility only if refrigerant was no longer in the units and the refrigerant compressors had been removed.
- 21. At the time of the inspection, EPA inspectors observed signage at the entrance to the facility stating that appliances with compressors still attached would not be accepted.
- 22. At the time of the inspection, EPA inspectors observed refrigerators clearly visible on a pile of metal to be recycled at the Hamilton facility, and the refrigerators so observed had cut refrigeration lines from which the refrigerant had not been recovered.
- 23. At the time of the inspection, Cohen stated that it did not recover refrigerant from small appliances delivered to the Hamilton Facility.

24. At the time of the inspection, EPA inspectors observed MVACs that had been delivered to the Hamilton Facility for recycling.
25. At the time of the inspection, Cohen stated that it did not require documentation of refrigerant recovery for small appliances and MVACs arriving at the Hamilton Facility empty of refrigerant.
26. By failing either to recover any remaining refrigerant from small appliances in accordance with 40 C.F.R. § 82.155(a); or to verify, using a signed statement or contract, that all refrigerant that had not leaked previously had been recovered from MVACs or small appliances or shipment of small appliances, Cohen violated 40 C.F.R. § 82.155(b) at the Hamilton Facility.
27. By failing to notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the facility, Cohen violated 40 C.F.R. § 82.155(b)(2)(ii) at the Hamilton facility.

Kellogg Facility

28. At the time of the inspection, a Cohen representative stated it accepted small appliances at its Kellogg Facility.
29. At the time of the inspection, a Cohen representative stated that it accepts small appliances at its Kellogg Facility only if the appliances are intact or accompanied by documentation accounting for proper recovery. Cohen representatives stated that this policy was implemented a few weeks before the inspection and was not able to produce any such documentation.
30. At the time of the inspection, EPA inspectors observed at least one refrigerator accepted by Cohen for recycling at the Kellogg Facility from which refrigerant had not been recovered.
31. At the time of the inspection, a Cohen representative stated that it was in the process of locating a contractor or other means to recover refrigerant onsite from appliances, but that Cohen had not yet recovered refrigerant from small appliances delivered to its Kellogg Facility.
32. At the time of the inspection, Cohen, at the Kellogg facility, did not have any signed statements or contracts verifying refrigerant recovery.
33. At the time of the inspection, EPA inspectors observed at the Kellogg Facility, paper signage stating that appliances with cut coolant lines or detached compressors would not be accepted.

- 34. At the time of the inspection, EPA inspectors observed at the Kellogg Facility, permanent signage that stated that appliances with compressors still attached would not be accepted.
- 35. At the Kellogg Facility, conflicting signage did not notify suppliers of appliances that refrigerant must be properly recovered before delivery of the items to the facility.
- 36. By failing to verify, using a signed statement or contract, that all refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances, Cohen violated 40 C.F.R. § 82.155(b)(2) at the Kellogg Facility.
- 37. By failing to notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the facility, Cohen violated 40 C.F.R. § 82.155(b)(2)(ii) at the Kellogg facility.

Moskowitz Facility

- 38. At the time of the inspection, Cohen stated it accepted small appliances at its Moskowitz Facility.
- 39. At the Moskowitz Facility, EPA inspectors observed on the scrap pile a refrigerator that had been delivered to Cohen for recycling.
- 40. At the time of the inspection, Cohen stated that it did not recover refrigerant from small appliances delivered to its Moskowitz Facility.
- 41. At the time of the inspection, Cohen stated that it did not require documentation of refrigerant recovery for small appliances arriving at the Moskowitz Facility.
- 42. By failing either to recover any remaining refrigerant from small appliances in accordance with 40 C.F.R. § 82.155(a); or to verify, using a signed statement or contract, that all refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances, Cohen violated 40 C.F.R. § 82.155(b) at the Moskowitz Facility.

Norwood Facility

- 43. On February 28, 2019, EPA sent a warning letter to the Norwood Facility, in response to complaints that air conditioning units were being vented on site.
- 44. In response to EPA's warning letter, Cohen stated, at the time of the inspection, that it recently amended its policy to only accept small appliances at its Norwood Facility if the refrigerant's circuits were still intact or the appliance contained a sticker documenting recovery.

45. At the time of the inspection, Cohen stated that it had recently started employing a contractor to recover refrigerant from intact small appliances delivered to its Norwood Facility.
46. At the time of the inspection, Cohen stated that it did not require documentation of refrigerant recovery for small appliances arriving at the Norwood Facility that no longer contained refrigerant.
47. At the time of the inspection, a supplier of Cohen communicated to EPA inspectors that the Norwood Facility previously accepted appliances that did not have refrigerant properly recovered and did not require documentation of proper refrigerant recovery.
48. By failing to verify, using a signed statement or contract, that all refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances, Cohen violated 40 C.F.R. § 82.155(b)(2) at the Norwood Facility.

Sharonville Facility

49. At the time of the inspection, a Cohen representative stated it accepted and has historically accepted small appliances at its Sharonville Facility without documentation of proper refrigerant recovery.
50. At the time of the inspection, a Cohen representative stated that Cohen accepts small appliances that are empty of refrigerant at the Sharonville Facility only if the appliances are accompanied by documentation accounting for proper refrigerant recovery. A Cohen representative stated that this policy had gone into effect the morning of the inspection and that Cohen did not use a specific form or contract for documentation of refrigerant recovery.
51. At the time of the inspection, Cohen stated that it did not recover refrigerant from small appliances delivered to the Sharonville Facility.
52. At the time of the inspection, EPA inspectors observed refrigerators clearly visible on a pile of metal to be recycled at the Sharonville Facility, and the refrigerators so observed had cut refrigeration lines from which refrigerant had not been recovered.
53. At the time of the inspection, Cohen did not have any signed statements or contracts verifying refrigerant recovery from appliances delivered to the Sharonville Facility.
54. By failing either to recover any remaining refrigerant from small appliances in accordance with 40 C.F.R. § 82.155(a); or to verify, using a signed statement or contract, that all refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances, Cohen violated 40 C.F.R. § 82.155(b) at the Sharonville Facility.

Walton Facility

- 55. At the time of the inspection, a Cohen representative stated it accepted small appliances at its Walton Facility.
- 56. At the time of the inspection, a Cohen representative stated Cohen accepted at its Walton Facility small appliances empty of refrigerant only if the appliances were accompanied by documentation accounting for proper refrigerant recovery. A Cohen representative stated that this policy had gone into effect a few weeks prior to the day of the inspection. Cohen did not use a specific form or contract for documentation of refrigerant recovery.
- 57. At the time of the inspection, Cohen stated it had never recovered refrigerant (by staff or contractors) from small appliances delivered to its Walton Facility.
- 58. At the time of the inspection, Cohen did not have any signed statements or contracts verifying refrigerant recovery from appliances delivered to the Walton Facility.
- 59. At the time of the inspection, EPA inspectors observed at the Walton Facility, paper signage stating that appliances with cut coolant lines or detached compressors would not be accepted.
- 60. At the time of the inspection, EPA inspectors observed at the Walton Facility, permanent signage that stated that appliances with compressors still attached would not be accepted.
- 61. At the Walton Facility, conflicting signage did not notify suppliers of appliances that refrigerant must be properly recovered before of the items to the facility.
- 62. By failing either to recover any remaining refrigerant from small appliances in accordance with 40 C.F.R. § 82.155(a); or to verify, using a signed statement or contract, that all refrigerant that had not leaked previously had been recovered from the appliance or shipment of appliances, Cohen violated 40 C.F.R. § 82.155(b) at the Walton Facility.
- 63. By failing to notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the facility, Cohen violated 40 C.F.R. § 82.155(b)(2)(ii).

West Carrollton Facility

- 64. At the time of the inspection, a Cohen representative stated it accepted small appliances at its West Carrollton Facility.
- 65. At the time of the inspection, Cohen stated that it did not recover refrigerant from small appliances delivered to the West Carrollton Facility.

66. At the time of the inspection, Cohen stated that it did not require documentation of refrigerant recovery for small appliances arriving at the West Carrollton Facility empty of refrigerant.
67. At the time of the inspection, EPA inspectors observed MVACs that had been delivered to the West Carrollton Facility for recycling.
68. By failing either to recover any remaining refrigerant from small appliances in accordance with 40 C.F.R. § 82.155(a); or to verify, using a signed statement or contract, that all refrigerant that had not leaked previously had been recovered from MVACs or small appliances or shipment of appliances, Cohen violated 40 C.F.R. § 82.155(b) at the West Carrollton Facility.

ENVIRONMENTAL IMPACT OF VIOLATIONS

69. These violations lead to emissions of ozone depleting substances, including chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs).
70. CFCs and HCFCs are known to contribute to the depletion of the stratospheric ozone layer, which protects life on Earth from the sun's harmful ultraviolet radiation (UV).
71. UV radiation has been associated with adverse health effects, including skin cancer, cataracts and immune suppression. UV radiation may also have adverse effects on plant life and aquatic ecosystems.

6/28/2019
Date

Michael D. Harris
Michael D. Harris
Acting Division Director
Enforcement and Compliance Assurance Division

CERTIFICATE OF MAILING

I certify that I sent a Finding of Violation, No. EPA-5-19-COE-05, by Certified Mail, Return Receipt Requested, to:


Jason DeDario,
Safety Director
Cohen Holdings, Inc., d/b/a Cohen Recycling
1520 Fourteenth Ave
Middletown, Ohio 45044

I also certify that I sent copies of the Finding of Violation by e-mail to:

Beverly Spagg
EPA Region 4
Spagg.beverly@epa.gov

Greg Fried
Chief, Stationary Source Enforcement Branch
US EPA, Office of Enforcement and Compliance Assurance
fried.gregory@epa.gov

On the 28th day of June, 2019


Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 70181830000054146240